

BOARD OF APPEALS CASE NO. 5413

*

BEFORE THE

**APPLICANTS: Fair Meadows LLC and
Forty Love Tennis LLC**

*

ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow a
tennis club in the Agricultural District;
Road, Bel Air**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 3/31/04 & 4/7/04

HEARING DATE: May 17 2004

Record: 4/2/04 & 4/9/04

*

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Fair Meadows, LLC and Forty Love Tennis, LLC, are seeking a special exception, pursuant to Section 267-53A(2) of the Harford County Code, to allow a tennis club in an Agricultural District.

The subject property is located at 2410 Creswell Road, Bel Air, Maryland 21015 in the First Election District, and is more particularly identified on Tax Map 57, Grid 2D, Parcel 179. The parcel contains approximately 43.14 acres, more or less.

Ms. Joy Raines appeared and testified on behalf of the Applicant, Fair Meadows, LLC and the Co-Applicant, Forty Love Tennis, LLC. The witness stated that she is the director of several tennis clubs. She is affiliated with the Co-Applicant, Forty Love Tennis, LLC., which has signed an agreement to lease the subject parcel from Fair Meadows, LLC, contingent upon the granting of the requested special exception. The witness testified that the site plan introduced as Applicant's Exhibit 1, differs from the site plan submitted with the Application, in that the proposed indoor tennis courts have been moved back further from Maryland Route 543 (Creswell Road), and proposed landscaping has been added.

The witness indicated that the Applicants are requesting approval for six (6) indoor, and six (6) outdoor tennis courts. The facility will be built in two stages, with the indoor courts and club house being constructed first. The facility will be operated as a private club. In addition to use by members, several area tennis programs, including Hickory Fountain Green, Harford County Recreation and Parks, and Harford County Tennis Foundation, will operate from the premises. The club will also be open to the public. The proposed hours of operation for both indoor and outdoor courts, are Monday through Friday from 8:00 a.m. until 10:00 p.m., Saturday from 8:00 a.m. until 9:00 p.m., and Sunday from 8:00 a.m. until 7:00 p.m.

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

According to Ms. Raines, the lighting for the outdoor courts would shine directly downward. The design of this lighting is such that the light shines only five feet over the court's boundary lines. The lights are operated on a timer, and shut off automatically whenever the court is not in use. The witness further testified that in her opinion, the granting of the requested special exception use will create no adverse impact on any surrounding property.

Ms. Raines indicated that she had read the Department of Planning and Zoning Staff Report, and addressed the three conditions suggested by the Department. According to the witness, the Applicants are in agreement with conditions one and two. They have already revised the site plan to comply with all required setbacks and added proposed landscaping. The Applicants are not in agreement with the third condition, which would limit the facilities hours of operation from 8:00 a.m. to 9:00 p.m. Monday through Saturday, and 8:00 a.m. to 7:00 p.m. on Sunday. Instead, she indicated that the Applicants are requesting that both the indoor and outdoor courts be allowed to remain open until 10:00 p.m. Monday through Friday.

Mr. Anthony McClune, Deputy Director, Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune testified that the Department recommended approval in its May 6, 2004 Staff Report, subject to the three conditions set forth in that report.

According to Mr. McClune, the Department reviewed the site plan submitted with the Application, and inspected the property and surrounding neighborhoods. The witness indicated that the revised site plan (Applicant's Exhibit 1), which includes increased setbacks along Maryland Route 543 (Creswell Road) meets all requirements set forth in Harford County Code Section 267-53A(2). However, he indicated that more comprehensive landscaping and lighting plans would need to be submitted for review and approval through the Development Advisory Committee. He also indicated that the Department would like to see additional landscaping added around the outdoor tennis courts.

Mr. McClune testified that the Department had considered all provisions set forth in Section 267- 9I of the Harford County Code in connection with this request. The Department determined that the proposed special exception use meets all criteria set forth in that Code section. With regard to traffic conditions, Mr. McClune indicated that the Applicants had submitted a preliminary traffic study (Staff Report Attachment 13) with their Application. Nevertheless, a final traffic study will be conducted by the Development Advisory Committee prior to final site plan approval. The witness also stated that Maryland Route 543 (Creswell Road) is a major collector road.

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

Mr. McClune next indicated that the subject property contains historic structures. There is an existing mansion house located to the northwest of the proposed outdoor tennis courts. The Department found that the proposed outdoor tennis courts should be placed as far away from these structures as possible, and that appropriate mitigative planting should be required to screen the facilities from existing historic structures. According to the witness, if the above referenced issues are addressed, the proposed special exception will meet all criteria set forth in Harford County Code Section 267-9I. The witness also stated that in his opinion, the proposed use, at the proposed location, would result in no greater impact to adjacent properties than it would have if located elsewhere within the Agricultural District.

Finally, Mr. McClune addressed the suggested conditions set forth in the Department of Planning and Zoning Staff Report. He noted that Applicant's revised site plan had satisfied condition one by moving the indoor tennis courts and parking behind the front setback. The witness also stated that given the testimony presented by the Applicant regarding the lighting proposed for the outdoor tennis courts, the Department would agree that the facility could remain open until 10:00 p.m. Monday through Friday. This would be contingent upon the submission of a lighting plan to be approved by the Department of Planning and Zoning during site plan review.

No witnesses appeared in opposition to the subject Application.

CONCLUSION

The Applicants, Fair Meadows, LLC and Forty Love Tennis, LLC, are seeking a special exception, pursuant to Section 267-53A(2) of the Harford County Code, to allow a tennis club in an Agricultural District.

The relevant provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Section 267-53A(2) provides:

“Country clubs, golf clubs, tennis and swim clubs. These uses may be granted in the AG, R, RR, R1, R2, R3, R4 and GI Districts, provided that:

- (a) No off-street parking or loading area shall be located within any required yard or within twenty-five (25) feet of any parcel boundary.
- (b) Off-street parking and loading areas, swimming pools, and tennis courts shall be screened from adjacent residential lots.
- (c) The principal access road shall be provided from an arterial or collector road.
- (d) No more than 20% of the land area upon which such a use is conducted may be located in the GI District.
- (e) Any outside lighting used to illuminate a use permitted under this section shall be designed, installed and maintained in a manner not to cause a glare or reflection on adjacent residential lots.

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

Section 267-9I provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

The Court of Appeals set forth the standard to be used in determining requests for special exception uses in the Schultz v. Pritts case, stating that

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants met their burden of proving that the requested use meets all standards and requirements prescribed by Harford County Code Section 265-53A(2). The subject parcel is zoned Agricultural. The off-street parking and outdoor tennis courts shown on the revised site plan (Applicant’s Exhibit 1), are located behind the 50-foot front yard setback, and can be adequately screened from adjacent residential lots. Principal access to the facility will be from Maryland Route 543 (Creswell Road), which is classified as a major collector-rural road. No portion of the subject parcel is located within the GI District. Finally, any proposed outside lighting plan will require approval by the Department of Planning and Zoning prior to final site plan approval.

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

The Hearing Examiner finds that the Applicants have met their burden of proof that the proposed use could be conducted without detriment to the neighborhood, or adversely affecting the public interest. The proposed facility will be located along the eastern boundary of a 43 acre parcel, which houses the Lincoln Christian College-East Coast. The facility will front along Maryland Route 543 (Creswell Road). The proposed indoor tennis courts will be over 194 feet away from the closest adjoining residential property line, and will be adequately screened from view of that property by mitigative plantings. Landscaping will also be required to screen the facility from historic buildings located on the subject property.

Maryland Route 543 (Creswell Road) is a major collector-rural road. A traffic impact study will be conducted by the Development Advisory Committee, and any necessary road improvements will need to be completed by the Applicants prior to final site plan approval. The Applicants have proposed a lighting system for the outdoor tennis courts which would illuminate an area no greater than five feet outside of the court's boundary lines. The lights would be operated by timers, and would be turned off unless the courts were actually in use. Any proposed lighting plan would require approval by the Department of Planning and Zoning during site plan review.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning that with the specified conditions, the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The Hearing Examiner also finds that with the implementation of the conditions set forth below, the proposed use, at the proposed location, would not result in any adverse impact to surrounding properties. Finally, for the reasons set forth above, the Hearing Examiner finds that the proposed use will not have any greater impact on adjacent properties at this location than it would have if it were located elsewhere within the Agricultural District.

The Hearing Examiner recommends approval of the Application subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC). The site plan shall be in general compliance with the site plan introduced as Applicant's Exhibit 1.
2. The Applicants submit a landscaping and lighting plan to be approved by the Department of Planning and Zoning at the time of site plan review.

Case No. 5413 - Fair Meadows LLC and Forty Love Tennis LLC

3. The hours of operation shall be limited to 8:00 a.m. until 10:00 p.m. Monday through Friday, 8:00 a.m. until 9:00 p.m. on Saturday, and 8:00 a.m. until 7:00 p.m. on Sunday.

Date JUNE 18, 2004

Rebecca A. Bryant
Zoning Hearing Examiner